THE INTERNATIONAL CENTRE FOR EXPERTISE OF THE

INTERNATIONAL CHAMBER OF COMMERCE

CASE No. EXP/434/ICANN/51

WORLD GOLD COUNCIL

(SWITZERLAND)

vs/

JUNE EDGE, LLC

(USA)

INTERNATIONAL CHAMBER OF COMMERCE

INTERNATIONAL CENTRE FOR EXPERTISE

EXP/434/ICANN/51

WORLD GOLD COUNCIL

(SWITZERLAND)

(OBJECTOR)

VS/

JUNE EDGE, LLC

(USA)

(APPLICANT)

EXPERT DETERMINATION

OF

COMMUNITY OBJECTION

January 7, 2014

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I. THE PARTIES, THEIR REPRESENTATIVES, AND THE EXPERT

1. The Objector in these proceedings is World Gold Council, an association with offices at c/o Pestalozzi Lachenal Patry, 65 Rue du Rhône, Geneva 3, Switzerland, CH-1211 ("World Gold Council"). Representing World Gold Council in these proceedings are Messrs. Flip Petillion and Jan Janssen from Crowell Moring, with offices at 7, Rue Joseph Stevens, B-1000 Brussels, Belgium.

2. The Applicant in these proceedings is June Edge, LLC, a company with offices at 10500 NE 8th Street, Suite 350, Bellevue, WA 98004, USA ("June Edge"). Representing June Edge in these proceedings are Messrs. John M. Genga and Don C. Moody from The IP & Technology Legal Group, P.C., doing business as New gTLD Disputes, with offices at 15260 Ventura Blvd., Suite 1810, Sherman Oaks, CA 91403, USA.

3. The Expert in this case is Mr. Aníbal Sabater from Norton Rose Fulbright, with offices at 666 Fifth Avenue, New York, NY 10103, USA.

II. APPLICABLE PROCEDURAL RULES

4. The parties agree that these proceedings are governed by, and must be conducted in accordance with, the Rules for Expertise of the International Chamber of Commerce (the "Rules"), supplemented by the International Chamber of Commerce's Practice Note on the Administration of Cases (the "Practice Note") under the Attachment to Module 3 of the gTLD Applicant Guidebook, New gTLD Dispute Resolution Procedure (the "Procedure") of the gTLD Applicant Guidebook (the "Guidebook").

III. STANDARDS APPLICABLE TO ADJUDICATE THE OBJECTION

5. One of the objections that may be raised against an application for a new gTLD is known as a "community objection." In order to adjudicate a community objection such as that brought in these proceedings, the Expert "shall apply the standards that have been identified by ICANN." Procedure, Article 20(a).

6. ICANN has set out standards applicable to the present dispute in its Guidebook, on which both parties rely. Context for and insights into the Guidebook's standards appear in a variety of ICANN instruments, including ICANN's policy development process for new gTLDs, entitled "Introduction of New Generic Top-Level Domains" (the "Final Report").

7. In addition to ICANN standards, the Expert may adjudicate a community objection on the basis of "any rules or principles that it determines to be applicable." Procedure, Article 20(b). In these proceedings, however, none of the parties has presented its case on the basis of rules or principles other than the ICANN standards. Accordingly, this determination shall be based on the ICANN standards.

IV. PLACE OF THE PROCEEDINGS

8. Under Article 4(d) of the Procedure, the place of these proceedings is the location of the Dispute Resolution Service Provider, namely Paris, France.

V. PROCEDURE

9. On March 13, 2013, World Gold Council filed a community objection to June Edge's application for the generic Top-Level Domain Name <.gold> (the "<.gold> gTLD"). Documentary evidence was annexed to the objection.

10. On May 15, 2013, June Edge sent a Response to World Gold Council's community objection. Documentary evidence was also attached to the Response.

11. On July 1, 2013, the ICC International Centre for Expertise (the "Centre") notified the parties that the undersigned had been appointed to serve as Expert in the case by the Chair of the Standing Committee of the Centre on June 15, 2013. On that same date, the Centre informed the parties that, under Article 14(3) of the Rules, it estimated the total administrative costs for this matter at €44,200, subject to later readjustments.

12. Having received each party's advance payment of the estimated total administrative costs, the Centre confirmed the full constitution of the Expert Panel and transferred the file to the Expert on July 30, 2013.

13. On August 8, 2013, the parties and the Expert participated at a procedural conference call. On the call, it was established that: (i) World Gold Council could file a supplement to its objection and June Edge could file an additional written statement in response thereto; (ii) the submission of any further evidence required prior leave from the Expert and a showing of an "exceptional case" warranting such submission; (iii) in keeping with paragraph 6 of the Note, the expert mission provided for in Article 12(1) of the Rules would not be issued in this case; and (iv) in keeping with Article 19(a) of the Procedure, no hearing would take place.

14. On August 18, 2013, World Gold Council filed the supplement to its objection, accompanied by a motion to submit additional documentary evidence. After affording June Edge an opportunity to comment on the issue, the Expert granted World Gold Council's motion on August 19, 2013.

15. On August 30, 2013, June Edge filed its additional written statement in response to World Gold Council's submission from August 18, 2013. June Edge's filing was also accompanied by a motion to submit additional documentary evidence. After affording World Gold Council an opportunity to comment on the issue, the Expert granted June Edge's motion on August 31, 2013.

16. On September 12, 2013, the Expert closed the record of these proceedings and referred the matter for determination.

17. Article 21(a) of the Procedure provides that the Centre and the Expert shall make reasonable efforts to ensure that the Expert renders his decision within 45 days of the "constitution of the Panel." The Centre considers that the Panel is constituted when the Expert is appointed, the parties have paid their respective advances on costs in full, and the file is transmitted to the Expert. In this case, the Panel was constituted on July 30, 2013, the date on which the Centre transmitted the file to the Expert. The Centre and the Expert were accordingly to make

reasonable efforts to ensure that his determination was rendered by September 13, 2013, as calculated in accordance with Articles 6(e) and 6(f) of the Procedure. Pursuant to Article 21(b) of the Procedure, the Expert submitted upon closing of the record his determination in draft form to the Centre for scrutiny as to form before it was signed.

VI. LANGUAGE

18. Under Article 5(a) of the Procedure, all submissions and communications in these proceedings have been made in English. Additionally, all documentary evidence submitted in these proceedings was originally drafted in English, which made translations under Article 5(b) of the Procedure unnecessary.[1]

VII. MEANS OF SUBMISSIONS AND COMMUNICATIONS

19. Under Article 6(a) of the Procedure, the parties submitted electronically all their filings, written communications, and evidence in these proceedings.

VIII. THE DISPUTE, SUMMARY OF PARTIES' GENERAL POSITIONS, AND PROCEDURAL STATEMENT

20. World Gold Council and June Edge disagree as to who, if either of them, is entitled to the <.gold> gTLD. Both parties have applied for it and both assert rights over it. The goal of these proceedings, however, is not to adjudicate the right to the <.gold> gTLD, but more narrowly, to grant or deny World Gold Council's community objection to June Edge's application.

21. Specifically, World Gold Council asserts that it has an ongoing relationship with the gold industry and in that alleged capacity resists June Edge's application to the <.gold> gTLD. According to World Gold Council, (i) the gold industry is publicly recognized as a clearly-delineated community at world level; (ii) there is substantial opposition in that community to the granting of June Edge's application; (iii) there is a strong association between the gold industry and the <.gold> gTLD; and (iv) there is a likelihood of material detriment to the rights and legitimate interests of a significant part of the community to which the string may be targeted if the <.gold> gTLD were granted to June Edge.

22. June Edge, for its part, considers that the objection should be dismissed because World Gold Council lacks standing to bring it and, in the alternative, because World Gold Council has not established any of the substantive requirements for an objection to prevail. Regarding standing, June Edge asserts that World Gold Council is neither acting

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[1] Notably, while most exhibits were originally drafted in English only, Exhibit 8 to World Gold Council's objection contained a set of bilingual letters, originally drafted both in English and Chinese. The Objector represented, and the Applicant did not challenge, that the contents of the original Chinese sections in these letters was similar to the contents of the original English sections, in other words, that the letters said the same in two languages, English and Chinese.

for a protected community nor an entity allowed to make use of the community objection process in general. Regarding substantive requirements, June Edge asserts that World Gold Council (i) invokes no clearly delineated community; (ii) demonstrates no substantial opposition to June Edge's application within the community that World Gold Council alleges to be related to; (iii) demonstrates no strong association between that community and the <.gold> gTLD; and (iv) has not proven material detriment in the granting of the <.gold> gTLD to June Edge.

23. The following sections of this Determination contain the Expert's reasoned findings and disposition of World Gold Council's community objection, starting with standing issues. The Determination is made having considered all submissions, arguments, and evidence offered in these proceedings. For purposes of resolving the objection, the Determination includes statements of the facts found by the Expert to be true and material. To the extent that these recitations of facts differ from any party's position, such differences are the result of the Expert's considerations as to credibility and relevance, burden of proof, and weighing of the evidence.

IX. REASONED FINDINGS ON STANDING

24. As a pre-requisite for the Expert to reach the merits of the objection, the Objector, who bears the burden of proof in accordance with § 3.2.2.4 of the Guidebook, must establish its standing. Guidebook, § 3.2.2.

25. Generally, an Objector that files a community objection has standing when it "is an established institution" and "has an ongoing relationship with a clearly delineated community." Guidebook, § 3.2.2.4. These two requirements will be addressed in turn.

A. Established Institution

26. Regarding the first element of standing (that is, whether the Objector is an established institution), the Guidebook identifies the following non-exhaustive list of relevant factors at § 3.2.2.4:

a) "Level of global recognition of the institution";

b) "Length of time the institution has been in existence"; and

c) "Public historical evidence of its existence, such as the presence of a formal charter or national or international registration, or validation by a government, inter-governmental organization, or treaty. The institution must not have been established solely in conjunction with the gTLD application process."

27. World Gold Council asserts that it is an established institution for standing purposes, and supports this assertion with allegations and evidence aimed at showing that the organization has been in existence for 25 years, that its 23 members comprise the world's leading gold mining companies, and that its activities include interaction with the World Bank and the European Union.

28. June Edge disagrees and does not consider World Gold Council an established institution because of what June Edge brands as the limited scope of World Gold Council's activities. At the heart of June Edge's position is an implication of artificiality. For June Edge, World Gold Council is just a special vehicle of sorts, dormant for a long time, recently activated mostly—and maybe only—to attempt to obtain the <.gold> gTLD, and not genuinely concerned with or involved in other gold industry matters.

29. June Edge's allegations in this regard fail. As the evidence it submitted with its two filings confirms, World Gold Council was established in 1987 and since then aims at protecting and promoting the interests of gold producers through an array of activities that go well beyond the issues at stake in these proceedings. Those activities include, without limitation, interacting with governments and international organizations to discuss legislation and measures that may affect the gold mining industry. In other words, World Gold Council is a genuine institution, as opposed to a "straw man" artificially generated to seek the <.gold> gTLD.

30. June Edge's allegations to the contrary having failed, World Gold Council is thus found to be an "established institution" within the meaning of § 3.2.2.4 of the Guidebook.

B. Ongoing Relationship with Clearly Delineated Community

31. Regarding the second element of standing, the Objector must establish the existence of a clearly delineated community and of an ongoing relationship between the Objector and that community. For this second element of standing, the Guidebook identifies the following non-exhaustive list of relevant factors at § 3.2.2.4:

a) "The presence of mechanisms for participation in activities, membership, and leadership";

b) "Institutional purpose related to the benefit of the associated community";

c) "Performance of regular activities that benefit the associated community"; and

d) "The level of formal boundaries around the community."

32. World Gold Council asserts that the clearly delineated community underlying its objection is the gold industry and that World Gold Council has an ongoing relationship with it. June Edge takes issue with these two assertions.

33. The notion of community is central to these proceedings. A community objection must not proceed if there is no community in connection with which the objection can be brought. According to June Edge, the communities protected under the ICANN system (that is, the communities regarding which community objections can be brought) are in essence groups of people with clearly distinguishable racial, cultural, or geographical features. June Edge offers the example of Navajo Indians and of Parisians as groups that would constitute clearly delineated communities and thus be entitled to protection through the ICANN community objection system.

34. The Expert is not persuaded that the notion of "clearly delineated community" must be understood as reserved to ethnicities or to territorially or culturally distinguishable groups such as those that June Edge mentions. Implementation Guideline IG P of the Final Report states, for instance, that the notion of "community should be interpreted broadly" and can "include ... an economic sector ...."

35. Understood in this way, the companies involved in the gold business would appear to constitute a community for purposes of ICANN proceedings. The question is whether that community is clearly delineated, as § 3.2.2.4 of the Guidebook requires.

36. Considering World Gold Council's allegations and evidence, there is certainly a case for asserting that the gold mining industry is sufficiently delineated as a community. It has a wide yet discernible membership, mechanisms for participation, and a minimum of structure and organization. World Gold Council's community objection, however, refers to the gold industry in general and not to the gold mining industry in particular. Thus, says World Gold Council, "The community to which the World Gold Council is related can be defined as the gold industry, in which the World Gold Council's members represent[t] approximately 60% of global corporate gold production ...." World Gold Council's objection, page 6. Also: "[T]he World Gold Council is an established institution and has an ongoing relationship with a clearly delineated community, the gold industry ...." Id.

37. By World Gold Council's own admission, the gold industry is larger than the gold mining or gold production industry—and it is precisely in this very broadness that serious problems with the delineation of the gold industry community arise. As June Edge has noted, it cannot always be established who is a member of the gold industry and who is not. World Gold Council asserts that gold jewelers are. The Expert has no issue with that characterization. But the Expert notes that there is a significantly larger cast of characters involved with gold who are not clearly classifiable as belonging to the gold industry or not. There are, for instance, transportation companies that, along with other products, ship and deliver gold (gold ore or processed gold) throughout the world. Is a shipping company that occasionally delivers gold part of the gold industry? Similarly, there are retailers who sell gold exclusively, primarily, or as a small fraction of their trade. There are also gold ore processing companies; and there are companies that manufacture, among others, products that contain gold, such as computer processors, tooth implants, or prostate seed implants. There are even companies specializing in the management and safekeeping of investments in precious metals, like gold or platinum. Without needing to consider further examples—which certainly exist—it is difficult to discern whether any of these companies is part of the gold industry. Or, more broadly, it is difficult to discern where the gold industry community starts or ends, who or what can genuinely claim to be part of it, and what its membership criteria and formal boundaries are.[2]

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[2] The membership criteria of a hypothetical community of gold producers or of Parisians are relatively easy to establish. If a company produces gold or helps produce gold, then it is arguably a member of the gold producers' community. If a person was born or spent significant time in Paris, then it is arguably a member

38. For these reasons, the gold industry community is not deemed to be clearly delineated within the meaning of § 3.2.2.4 of the Guidebook.

39. Because World Gold Council has not met a threshold standing requirement, the analysis must stop here. The community objection must be dismissed and this Determination brought to an end, without prejudging or addressing June Edge's application for the <.gold> gTLD.

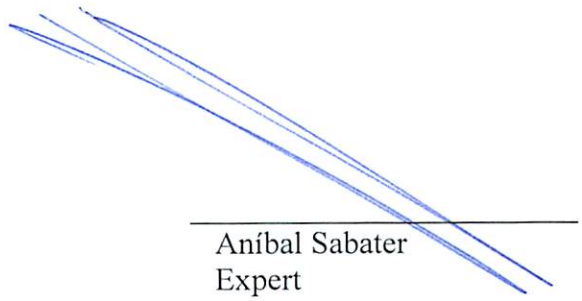
X. DISPOSITIVE SECTION

40. In light of the foregoing, and in accordance with Article 21(d) of the Procedure, I hereby render the following Expert Determination:

a) World Gold Council's community objection in connection with the gold industry against June Edge's application for the <.gold> gTLD is dismissed for lack of Objector's standing;

b) Because June Edge is the prevailing party in these proceedings, the Centre shall reimburse June Edge's advance on costs under Article 14(e) of the Procedure.

January 7, 2014



Aníbal Sabater
Expert

of the community of Parisians. No such clear test exists to determine who is a member of the gold industry community, which goes to confirm the lack of delineation of that community.